



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNR, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of this application. The tenant attended the hearing and provided affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by serving an agent of the landlord on June 6, 2011, the landlord did not attend, nor did any agent of the landlord. The tenant testified that she served the agent of the landlord by handing the documents directly to the agent. She also stated that the landlord has no dealings with tenants, and only his agent was available for service. I find that the landlord has been properly served, in accordance with Section 89 of the *Residential Tenancy Act*.

### **Issue(s) to be Decided**

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

### **Background and Evidence**

The tenant testified that this month-to-month tenancy began on or about June 1, 2009, and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and there are currently no rental arrears. On or about May 15, 2009 the landlord collected a security deposit from the tenant in the amount of \$500.00.

The tenant also testified that she was behind in the rent for the months of April and May, 2011. On June 1, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of the notice was provided by the tenant in advance of the hearing, and it is dated May 30, 2011 and states that the tenant failed to pay rent in the amount of \$2,050.00 that was due on May 1, 2011 and contains an expected date of vacancy of June 10, 2011. The

tenant paid the landlord's agent \$1,955.00 by way of a cheque on June 5, 2011, but on June 6, 2011 the landlord or the landlord's agent returned it to the tenant by posting it to the door of the rental unit with a note stating that the landlord would only accept cash or certified cheque. The tenant borrowed the money because she could not access that amount of money from an ATM machine, and paid the landlord's agent \$1,955.00 in cash on June 6, 2011 and another \$95.00 the same day, and was issued receipts for those payments.

On June 8, 2011 the landlord served the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was posted to the door of the rental unit. The tenant gave the landlord's agent \$1,000.00 cash on June 14, 2011.

When asked why the tenant paid \$2,050.00 on June 6, 2011, she stated that she assumed the landlord added an extra \$50.00 to the notice for the cost of filing for Dispute Resolution.

### **Analysis**

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after the day rent is payable. The tenant then has 5 days to pay the rent in full or apply for dispute resolution disputing the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out on that date.

In this case, I find that the notice to end the tenancy was posted to the door of the rental unit on June 1, 2011, and was therefore deemed to have been served 3 days later, or June 4, 2011. The tenant then had 5 days to pay the rent in full or apply for dispute resolution, or by June 9, 2011. The tenant paid the rent in full on June 6, 2011, and therefore the notice is of no effect.

With respect to the second notice issued, I find that the notice was deemed to have been served on the tenant on June 11, 2011 and the tenant then had until June 16, 2011 to pay the rent or dispute the notice. The tenant paid the rent in full on June 14, 2011, and therefore, the notice is of no effect.

With respect to the first notice issued, I find that the landlord has decided upon himself to charge the tenant an additional \$50.00, which the tenant paid. I further find that the landlord had no legal basis to charge an additional \$50.00, and that money ought to be returned to the tenant.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### **Conclusion**

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby allowed. I order that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 30, 2011 and the one issued on June 8, 2011 are both cancelled.

I further order that the tenant be permitted to deduct the amount of \$100.00 from a future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 24, 2011.

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Residential Tenancy Branch